

Lau v Tycoon Brand Holdings LLC
2020 NY Slip Op 32949(U)
September 4, 2020
Supreme Court, New York County
Docket Number: 651473/2020
Judge: Nancy M. Bannon
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM

Justice

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JADA LAU and P.I. TRADING, LLC,
Plaintiffs,

INDEX NO. 651473/2020

MOTION DATE 08/27/2020

MOTION SEQ. NO. 001

- v -

TYKOON BRAND HOLDINGS LLC, HACULLA NYC INC.
and JONATHAN KOON

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15

were read on this motion to/for DISMISS

The plaintiffs in this action seek to recover for unpaid product development services performed for the defendants' apparel company. Plaintiff Lau claims to have had a longstanding working relationship with the defendants and that she and plaintiff P.I. Trading LLC provided services per an oral agreement from 2016 to 2019, but the defendants refused to fully pay for the services rendered. The plaintiffs seek an unspecified sum as reimbursement for travel expenses and payments made to vendors and suppliers. The complaint alleges several theories of liability - the Freelance Isn't Free Act (NYC Administrative Code § 20-927 et seq) ("FIFA"), breach of contract, unjust enrichment, promissory estoppel and quantum meruit.

The defendants now move, pre-answer, to dismiss the first, third, fourth and fifth causes of action on the ground that they fail to state a cause of action (CPLR 3211[a][7]). In essence, the defendant contends that FIFA is inapplicable as it was enacted, and became effective in May 2017, after the alleged contract was entered, and was not retroactive, and that the causes of action for unjust enrichment, promissory estoppel and quantum meruit are duplicative of the breach of contract claim. In opposition, the plaintiffs concede that the subject oral agreement was made in 2016 and do not dispute that FIFA, intended to protect freelance workers against

unlawful payment practices and other abuses, was enacted in May 2017 and was not retroactive. As to the remaining causes of action that the defendants seek to dismiss, the plaintiffs do not meaningfully dispute the duplicative nature of their claims but argue that they should be permitted to plead in the alternative. The motion is granted.

On a motion to dismiss for failing to state a cause of action under CPLR 3211(a)(7), the pleading is to be afforded a liberal construction and the court should accept as true the facts alleged in the complaint, accord the pleading the benefit of every reasonable inference, and only determine whether the facts, as alleged, fit within any cognizable legal theory. See Hurrell-Harring v State of New York, 15 NY3d 8 (2010); Leon v Martinez, 84 NY2d 83 (1994). However, where the allegations contained in the pleadings consist of bare legal conclusions, they are not entitled to such consideration. See Beattie v Brown & Wood, 243 AD2d 395 (1st Dept. 1997).

As correctly argued by the defendants, since FIFA was not enacted and did not become effective until after the alleged contract was formed, the first cause of action must be dismissed. The plaintiffs' remaining arguments in regard to this cause of action are unpersuasive. In particular, the plaintiffs provide no authority for their argument that the court should apply the statute retroactively notwithstanding its clear language that it is prospective only.

The third, fourth and fifth causes of action, sounding in unjust enrichment, promissory estoppel and quantum meruit, respectively, are inadequately plead because they are duplicative of the plaintiff's second cause of action, which seeks to recover for breach of contract. The claims are premised upon the same facts and seek the same damages, albeit vaguely.

It is well settled that where, as here, a plaintiff seeks to recover under an express agreement, no cause of action lies to recover for unjust enrichment. See Clark-Fitzpatrick, Inc. v Long Is. R.R. Co., 70 NY2d 382 (1987); JDF Realty, Inc. v Sartiano, 93 AD3d 410 (1st Dept. 2012). That is, "[t]he existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter. A 'quasi contract' only applies in the absence of an express agreement, and is not really a contract at all, but rather a legal obligation imposed in order to prevent a party's unjust enrichment." Clark-Fitzpatrick, Inc. v Long Is. R.R. Co., supra at 388.

Similarly, “where there is an express contract no recovery can be had on a theory of implied contract.” SAA-A v Morgan Stanley Dean Witter & Co., 281 AD2d 201, 203 (1st Dept. 2001). Thus, a claim for promissory estoppel is barred by the alleged existence of a contract. ID Beauty S.A.S. v Coty Inc., 164 AD3d 1186 (1st Dept. 2018); Susman v Commerzbank Capital Markets Corp., 95 AD3d 589 (1st Dept. 2012).

Since the plaintiffs allege that the parties had a valid contract, the cause of action alleging quantum meruit, is also precluded. See Clark-Fitzpatrick, Inc. v Long Is. R.R. Co., *supra*; Sebastian Holdings, Inc. v Deutsche Bank, AG., 108 AD3d 433 (1st Dept 2013); Ellis v Abbey & Ellis, 294 AD2d 168 (1st Dept. 2002). To state a cause of action sounding in quantum meruit, a plaintiff must allege and establish (1) the performance of services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation therefor, and (4) the reasonable value of the service. See Fulbright & Jaworski, LLP v Carucci, 63 AD3d 487, 488-489 (1st Dept 2009); Soumayah v Minnelli, 41 AD3d 390, 391 (1st Dept 2007). In addition, a plaintiff must establish the absence of a valid and enforceable written contract for the same services. While the plaintiffs would be permitted to proceed in the alternative upon a quasi-contractual theory such as quantum meruit if there were a question as to whether a valid and enforceable contract existed (see Forman v Guardian Life Ins. Co. of America, 76 AD3d 866 [1st Dept. 2010]), no party raises such issues or disputes the enforceability of the subject agreement in this case. In their motion papers, the defendants do not deny an agreement with the plaintiffs and do not seek dismissal of the breach of contract claim. Therefore, the plaintiffs may not plead a claim for quantum meruit in the alternative to its breach of contract claim.

Accordingly, and upon the foregoing papers, it is


ORDERED that the defendants’ motion to dismiss the first, third, fourth and fifth causes of action pursuant to CPLR 3211(a)(7) is granted and those causes of action are dismissed, and it is further

ORDERED that the defendants shall serve and file an answer to the remaining cause of action of the complaint within 20 days, and it is further

ORDERED that the parties shall (1) confer and commence discovery in a cooperative fashion, employing remote technology whenever possible (see Administrative Order of the Chief Administrative Judge of the Courts AO/129/20), and (2) contact the court on or before October 30, 2020, to schedule a preliminary conference, and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

9/4/2020
DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE